IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23393 of 2007(I)

PETITIONER:

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1. BABY, W/O.SUKUMARAN, VATTAVILA PUTHEN VEEDU, MURIYANKARA DESOM, PARASSALA VILLAGE.

2. SUKUMARI, W/O.VICTOR, MOOPPUVILA VEEDU, KARODE DESOM, KARODE VILLAGE.

3. BINUKUMAR, S/O.SUKUMARAN, VATTAVILA PUTHEN VEEDU, MURIYANKARA DESOM, PARASSALA VILLAGE.

4. VINEETHA, D/O.BABY, DO. DO.

BY ADV. SRI.G.P.SHINOD

RESPONDENTS:

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1. CHANDRIKA, D/O.NARAYANI AMMA, K.S.NIVAS, THACHAMCODE, KUNNATHUKAL DESOM, KUNNATHUKAL VILLAGE.

2. SADASIVAN, S/O.KUMARA PILLAI OF DO. DO.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.23393 OF 2007 I

Dated this the 31st July, 2007.

JUDGMENT

This writ petition is filed to set aside Ext.P11 order and to stay all further proceedings in E.P.349/05 in O.S.1004/98. The plaintiffs are the writ petitioners before this court. The grievance of the writ petitioners are that in the process of attempting to execute the delivery by requesting the court to deliver the plot ABKLMGH, a sizable portion of their residential building which is situated in LMGH is attempted to be demolished for the purpose of taking delivery of the property. Learned counsel for the writ petitioners had drawn my attention to the statement filed by defendants 1 and 2 when the matter was pending before the appellate court. It was submitted that .... When such a statement was made which hinted that the building in the plaint schedule property is to be allotted to the share of the plaintiffs then plaintiffs did not prosecute the appeal. In para 4 of the counter statement it is stated that the defendants do not want any portion of the building wherein

the plaintiffs reside. In the light of this submission the appeal was not prosecuted by the plaintiffs and dismissed. Now, I am informed that I.A.1797/06 is filed before the appellate court to revive the appeal because now an attempt is made against the assurance given to the court by relying upon the commissioner's plan and report. There appears to be contention which has to be considered by the court. Therefore, I direct the executing court not to effect delivery till some decision is taken in I.A.1797/06 in A.S.172/05 and the Sub Court, Neyyatinkara is directed to dispose of the said I.A within a time frame of six weeks from today and the court below shall defer the delivery of the property, if already ordered till such time. When the appellate court disposes of the matter the court shall reconsider the whole and pass appropriate orders. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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